Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Reorganization and Revision	)	
of Parts 1, 2, 21 and 94	)	**WT Docket No. 94-148**
of the Rules to Establish a	)	
New Part 101 Governing	)	
Terrestrial Microwave Fixed	)	DOCKET FILE COPY ORIGINAL
Radio Services	)	

To: The Commission

CONSOLIDATED COMMENTS ON PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, UTC, The Telecommunications Association (UTC),[1] respectfully submits the following comments on a number of the "petitions for reconsideration" filed on the rule changes adopted in the *Report and Order* (*R&O*) in the above-captioned proceeding to consolidate the rules for the Private Operational Fixed Service (POFS) and the Common Carrier Point-to-Point Microwave Service.[2]

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[1] UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

[2] On July 24, 1996, Public Notice of these petitions was provided in the Federal Register, 61 Fed. Reg. 38449.

As the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines, UTC has been an active participant throughout this proceeding. In fact, UTC has itself filed a "petition for reconsideration/ clarification" regarding several aspects of the *R&O*. UTC is therefore pleased to offer the following comments on a number of the petitions for reconsideration.

I. The Analog Channel Loading Requirements Are Excessive

Both the Association of American Railroads (AAR) and the Fixed Point-to-Point Section of the Telecommunications Industry Association (TIA) request that the FCC reconsider its adopted analog channel loading requirements and adopt a more flexible standard. UTC agrees that the adopted standard, new Section 101.141(c), which requires that analog systems using bandwidth of 10 MHz or more meet a 50 percent channel loading requirement, is excessive. The adopted standard will require private users to install unnecessary or additional equipment in an inefficient manner simply to meet an arbitrary channel loading requirement.

Accordingly, UTC supports TIA's proposed adoption of a 25%, instead of 50% minimum loading requirement. Such a rule would provide users with the necessary flexibility to design their networks in a manner that is consistent with typical analog system architectures. If the Commission elects not to modify the channel loading

requirement, UTC joins AAR in urging the FCC to "liberally waive loading requirements" for all POFS systems as it stated it would for displaced 2 GHz licensees.[3]

II. The FCC Should Publish Information On New Applications For POFS

TIA and NSMA have requested that the FCC reinstate the public notice requirement for POFS frequency coordination. UTC concurs that the timely availability of information related to new applications serves a valuable purpose: it ensures proper frequency coordination and helps to identify and resolve conflicts prior to license grant. Nevertheless, UTC is concerned about the potential delays to service deployment that would be caused by reinstatement of the 30-day public notice requirement. Accordingly, UTC supports a compromise under which the FCC would routinely publish lists of POFS received. The issuance of the list would not create a right to protest a POFS application, but could be used for information gathering purposes and would greatly facilitate the frequency coordination process. The Commission could transmit the list over the internet.

III. The Commission Should Not Alter The Definition Of MAS

In its petition AAR requests that the Commission reconsider its decision to retain the current Section 101.3 requirement that each master station in a "Multiple Address System" (MAS) serve "at least its own four remotes operating on its assigned frequency." AAR recommends that the minimum number of remotes be reduced to two in order to accommodate situations in which topography or routing of right-of-way preclude the siting of four remotes.

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[3] *R&O*, para. 77.

The Commission should again reject AAR's request. AAR readily admits that railroads (or any other applicant) requiring fixed radio service between as few as two or three points can secure licensing on point-to-point frequencies. However, AAR argues that it is economically inefficient to require licensees to apply for separate point-to-point licenses. AAR's argument is unpersuasive. As the FCC noted in the *R&O*, the issue of the number of remote sites that each MAS system must serve was thoroughly considered in PR Docket No. 87-5. In that docket the FCC concluded that using MAS frequencies to provide essentially point-to-point communications is spectrally inefficient.[4] Nothing in the record or in AAR's petition would support a change in that conclusion.

If anything, the additional licensing of the MAS frequencies during the intervening years since the Commission's decision in Docket 87-5, has made it even more important that these channels be used efficiently. As UTC noted in its reply comments in the present docket, relatively few MAS channels have been allocated, and they are not available in many areas of the country. Given the scarcity of available MAS channels coupled with the preclusive effect of the MAS coordination process (90-mile master-to-master separation) on the ability to license additional MAS systems in close proximity, the routine assignment of MAS channels to serve only two or three remotes would be an extremely inefficient use of the spectrum.

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[4] *Report and Order*, PR Docket No. 86-5, 3 FCC Rcd 1564 (1988).

IV. A Finder's Preference Program For MAS Would Appear To Have Merit, But Should Be Considered As Part Of A Separate Proceeding

Multipoint Networks (Multipoint) has requested that the FCC institute a "finder's preference" program for MAS frequencies. Under a finder's preference program parties that identify unused frequencies or licensees that are not operating in compliance with their authorization are given the first chance to acquire the recovered frequencies. Multipoint notes the current scarcity in many areas of the country of available MAS channels and indicates a need to ensure that all MAS frequencies are licensed to parties with an actual and immediate requirement for the spectrum. Multipoint states that a finder's preference program would act as a critical supplement to the Part 101 automatic forfeiture provisions that are aimed at licensees who fail to construct or use their systems within the authorized time frame.

UTC shares Multipoint's concern and frustration over the lack of available MAS frequencies. UTC has supported the implementation of finder's preference programs in the past and believes that a finder's preference program in the MAS bands merits further examination. However, as a procedural matter UTC questions whether a petition for reconsideration of Part 101 is the appropriate vehicle to consider a finder's preference program. Part 101 entailed a consolidation of Parts 21 and 94 and the elimination of unnecessary regulations. The issue of a finder's preference program was not raised in the *NPRM* or in the comments or reply comments filed in response to the *NPRM* and therefore interested parties were not given sufficient notice to comment on the issue. UTC

recommends that the issue of a finder's preference program should be taken up as a separate rulemaking where interested parties can fully consider the value of such a program and act to ensure that sufficient safeguards are enacted to protect legitimate users from "bounty hunters."[5]

V. The FCC Should Clarify That Section 101.65 Does Not Apply To Interim Relocation Agreements Made Pursuant To The 2 GHz Transition Rules

UTC supports the request filed by Cox and Smith that the FCC clarify that the new Section 101.65 (Forfeiture and Termination of Station Authorization) requirement that a station license will be automatically forfeited upon the voluntary removal or alteration of the facilities, so as to render the station not operable for a period of thirty days or more, does not apply to microwave relocation arrangements made pursuant to the 2 GHz relocation rules of Section 101.69. UTC requested a similar clarification in its petition for reconsideration.

Such a clarification will promote the public interest by facilitating microwave relocations by eliminating any concern on the part of incumbent 2 GHz microwave licensees that a relocation could result in a premature termination of their license authorization.

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[5] For example, UTC disagrees with Multipoint's premise that monitoring of an MAS frequency on a single day should be sufficient to demonstrate warehousing of MAS channels. There is no requirement that MAS facilities operate on a continuous or even daily basis. *Cf.* 47 C.F.R. Section 101.65(d) (Microwave facilities that are not operated for one year are considered to have been permanently discontinued). The factors justifying award of a finder's preference should be explored in a rulemaking proceeding.

VI. The Definitions Of Part 101 Should Be Modified To Recognize Private Internal Use By The Licensee

The vast majority of microwave systems operated by utilities and other POFS licensees are used exclusively for private, internal communications requirements. Unfortunately, the new definition of "Private Operational Fixed Point-to-Point Microwave Service" does not recognize that an essential element of POFS is the use of the system by the licensee to meet its internal communications requirements. Instead, Section 101.3 defines Private Operational Fixed Point-to-Point Microwave Service as follows:

> *A private line radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico*

The operative phrase in this definition is "private line radio service" which, in turn, is defined as:

> *A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability or of a particular customer and authorized users during stated periods of time.*

As AAR points out, this definition does not incorporate the essential POFS concept that a station is operated for the sole or primary use of the licensee. While AAR proposes to remedy this deficiency by amending the definition of "Private Line Radio Service" to explicitly recognize the private, internal use nature of POFS by including the phrase "of the licensee," UTC recommends a more direct approach. UTC suggests that the FCC adopt a definition of "Private Operational Fixed Point-to-Point Microwave Service" that does not rely on a reference to private line service, as that is essentially a common carrier construct and has little application to private operational fixed services. Specifically, UTC

recommends the following definition for "Private Operational Fixed Point-to-Point Microwave Service":

> *A private radio service rendered on microwave frequencies for communication between two or more designated points that are set aside for the exclusive use or availability of the licensee or other eligible entities by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico*

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

UTC

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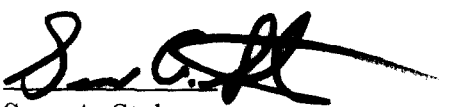

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